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GENERAL PROVISIONS

All bids submitted as a result of City of Colorado Springs Invitations for Bids (IFB) shall be in accordance with the latest version of the City's Procurement Rules, Regulations and Information. The latest version is posted on the City's web-site at www.springsgov.com/purchasing, and can be reviewed or downloaded.

DEFINITIONS AND TERMS

Also see Procurement Rules 1-103 Terms Defined

City	City of Colorado Springs, Colorado.
Contract Documents	Contract Documents shall consist of Advertisement for Bids, Instructions to Bidders, Form of Bid or Proposal, Addenda, the signed Agreement, surety bonds, insurance documents, the General and Special Provisions of the Contract, the Plans, the Specifications, the Drawings, including all modifications thereof incorporated in any of the documents before execution of the agreement. The term Plans shall include the term Drawings unless otherwise specified.
Contractor	The person, persons, firm, or corporation to whom a contract is awarded by the City and who is subject to the terms of said contract. Contractor shall include the agents, employees, workmen, Contractors and any assignees of said contract.
Due Date and Time	The scheduled date and time for the receipt of bids, and opening thereof.
Engineer	The City Engineer of Colorado Springs or, designated representative.
Project Engineer/Manager	The individual representing the City of Colorado Springs responsible for Managing and oversight of the Contract.
Notice	<p>Any written notice served pursuant to the terms of the contract. Notice shall be deemed to have been duly served if delivered in person or by registered mail to:</p> <p><u>Pre-award</u> The Procurement Analyst listed in the Invitation for Bid, City of Colorado Springs, Procurement and Contracts, 30 South Nevada Ave., Room 201, Colorado Springs, CO 80903.</p>

Post award

The Project Manager listed in the Invitation for Bid, City of Colorado Springs, City Engineering, 30 South Nevada Ave., Room 403, Colorado Springs, CO 80903.

Notice to the Contractor will be to the Chief representative of the Contractor at the site of the project in person; or by registered mail to the place stated in the papers prepared by the Contractor to accompany their proposal as the address of their permanent place of business; or as to the Surety on the performance bond by registered mail to the Surety at the home office of such surety.

Project	The entire improvement proposed by the City to be construed in whole or in part pursuant to the contract.
Proposal Form or Bid Proposal	A contract document prepared by the City upon which the bidder shall submit their bid.
Subcontractor	A person, firm, or corporation, other than the Contractor, supplying labor or materials, or both, or equipment furnished at the site of the project under an Agreement with the Contractor.
Surety	The person, firm, or corporation that has executed as surety the Contractor's Bid, Performance, Payment and Maintenance Bonds.
Calendar Day	Each and every day shown on the calendar, beginning and ending at midnight.

SECTION 100

PROSPECTIVE BIDDERS

100 PROCUREMENT RULES AND REGULATIONS

All formal bid and/or Request for Proposals advertised by the City of Colorado Springs are solicited in accordance with the City's Procurement Rules and Regulations. The City's Procurement Rules and Regulations can be reviewed and/or downloaded from the Purchasing and Contracts web-site (see 100.01).

100.01 ADVERTISEMENT FOR BIDS

All bids estimated to exceed \$50,000.00 will be formally advertised under normal conditions. Formal bids will be advertised at least one time as a legal notice in the Colorado Springs Gazette Telegraph, and posted on the City's web-site at www.springsgov.com/purchasing.

All interested bidders may register via the City's WEB site through CityWire to receive notification of bids posted on the web-site. This registration allows bidders to be automatically notified when a formal solicitation is advertised for the service or commodity they registered to provide.

100.02 INVITATION FOR BIDS - CONTENT

The Invitation for bids shall include the following: (a) Instructions and information to bidders concerning the bid submission requirements, including the time and closing date, the address of the office to which bids are to be delivered; (b) The project description, basis of award, delivery or performance schedule and inspection and acceptance requirements; (c) The contract terms and conditions, including warranty and bonding or security requirements as applicable.

Project specific requirements, terms and conditions, etc. for each solicitation will be modified to reflect the contractual requirements for that particular Invitation for Bids or Request for Proposals. These types of requirements will be specified in Instructions to Bidders, Terms and Conditions, General Provisions, and Specifications.

100.03 EQUAL OPPORTUNITY

The Purchasing and Contracts Office shall be responsible for ensuring the procurement of products, commodities, and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete.

SECTION 101

CONTRACT DOCUMENT INTERPRETATION

101.01 INTENT OF CONTRACT DOCUMENTS

- A. The sections of the contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the contract documents is to include in the contract price the cost of all labor and materials, water, fuel, tools, plant, equipment, light, transportation, and all other expenses as may be necessary for the proper execution of the work.
- B. Any work shown on the Plans and not covered in the Specifications, or included in the Specifications and not shown on the Plans, shall be executed by the Contractor as though shown both on the Plans and included in the Specifications. If the Plans and Specifications should be contradictory in any part, the Specifications shall govern. Special specifications shall govern over standard specifications.
- C. If the Contractor, in the course of the work, finds any discrepancy between the Plans and the physical layout, or any errors or omissions in Plans or layout, he shall immediately so inform the Engineer, and the Engineer shall promptly verify them. Any work done after such discovery without written consent of the Engineer authorizing the same shall be done at the Contractor's risk.
- D. Any incidental and/or appurtenant items not specifically called for in the Plans and Specifications, but which are necessary to complete the work in accordance with the requirements of good practice, as determined by the Engineer, shall be included as a part of the Contractor's bid price and furnished at no additional cost to the Owner.
- E. In interpreting the contract documents, words describing materials or work which have a well known technical or trade meaning, unless otherwise specifically defined in the contract documents, shall be constructed in accordance with such well known meaning recognized by architects, engineers, and the trade.

101.02 ORDER OF PRECEDENCE

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) Terms and Conditions; (b) Proposal Requirements; (c) Contract Form; (d) other documents, exhibits, and attachments (excluding the contract drawings); (e) the specifications; and (f) the contract drawings.

101.03 SPECIAL PROVISIONS, SPECIAL SPECIFICATIONS

Special Provisions or Special Specifications may be written to expand upon, modify or cancel these general provisions or the standard specifications. If the special provisions and general provisions are contradictory, the special provisions shall govern. If the special specifications and standard specifications are contradictory, the special specifications shall govern.

101.04 STANDARD MANUFACTURER

Wherever the terms "standard", "recognized" or "reputable" manufacturers are used, they shall be construed as meaning manufacturers who have been engaged in the business of fabricating materials, equipment, or supplies of the nature called for by the Specifications for a reasonable period of time prior to the date set for opening of bids, and who can demonstrate to the satisfaction of the City that said manufacturer has successfully installed equipment, materials, or supplies of the type proposed to be furnished in at least three instances and that the performance of such materials, equipment, or supplies for a period of over twelve months prior to the date fixed for opening bids shall, prima facie, be deemed to have been engaged in such business for a reasonable length of time.

101.05 "OR EQUAL" CLAUSE

Whenever in any section of the contract documents, any article, material, or equipment is defined by describing a proprietary product, or by using the name of manufacturer or vendor, the term "or equal" if not inserted, shall not be construed in such a manner as to exclude manufacturers' products of comparable quality, design, and efficiency, subject to review and approval by the Engineer. The Engineer may require that proposed equals be submitted for review and approval.

101.06 TIME OF ESSENCE

In as much as the Contract concerns a needed improvement, the provisions of the Contract relating to the time of performance and completion of work are of the essence of this Contract. The Contractor shall begin work on the day specified in the Notice to Proceed and shall prosecute the work diligently so as to assure completion of the work within the number of calendar days or date specified, or the date to which the time for completion may have been extended.

101.07 PARTIAL WAIVER OR WAIVER BY ACQUIESCENCE

Partial waiver or waiver by acquiescence of any of the general or special provisions of this contract shall not constitute waiver of any of the other provisions contained in the Contract Documents.

SECTION 102

COMPLIANCE WITH LAWS

102.01 LAWS AND REGULATIONS

This contract is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court Jurisdiction shall exclusively be in the District Court for El Paso County. The Contractor shall insure that the Contractor and the Contractor's employees, agents, and officers are familiar with, and comply with, applicable Federal, State, and Local laws and regulations as now written or hereafter amended.

102.02 PUBLIC IMPROVEMENT ASSESSMENT

If the cost of the improvement to be constructed under the contract is to be assessed upon the owners of land benefited by such improvement, upon complaint of any such landowner that the improvement is not being constructed in accordance with the contract, the City Council may consider the complaint and make such order in the premises as shall be just to ensure compliance with the contract.

102.03 ALL LEGAL PROVISIONS INCLUDED

It is the intention and agreement of the parties to this contract that all legal provisions of law required to be inserted, shall be and are inserted. However, if by mistake or otherwise, some such provision is not inserted, or is not inserted in proper form, then upon application of either party, the contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party.

102.04 SEVERABILITY

If any provisions of this contract shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this contract.

102.05 REQUIREMENTS FOR CORPORATIONS OR INDIVIDUALS DOMICILED OUTSIDE THE STATE OF COLORADO

Unless otherwise decided by reason of the amount of the Contract involved, or other good reason, before or at the time that the Contract is awarded to a corporation outside the State of Colorado, such corporation must have carried out the proper procedure authorized to do business in the State of Colorado, designate a place of business therein, and appoint an agent for service of process. Such corporation must furnish the City with a certificate from the Secretary of the State of Colorado to the effect that a Certificate of Authority to do business in the State of Colorado has been issued by his office and there shall also be procured from the Colorado Secretary of State a photostatic or certified copy

of the designation of place of business and appointment of agent for service of process, or a letter from the Colorado Secretary of State that such designation of place of business and agent for service of process have been made. In the event the successful bidder is an individual operating a sole proprietorship, a partnership or joint venture, the execution of these Contract Documents by such successful bidder shall amount to an appointment of the Sheriff of El Paso County, Colorado, as the agent for service of process of such successful bidder for any and all disputes that may arise under the Contract with acknowledgment that the State of Colorado shall be the proper venue for determination of such a dispute.

102.06 LICENSES AND PERMITS

It shall be the responsibility of the successful bidder to obtain, at his expense, all necessary licenses and permits to do the project, in accordance with applicable Federal, State and local laws, regulations and ordinances. Typical permits and fees include, but are not limited to, Excavation/Boring Permits, Concrete Construction Permits, Fugitive Dust Permits, Regional Building Permits, Pavement Degradation fees, as well as Traffic Control and Barricade Plans to be approved by the City Traffic Division for all work within public rights-of-way and easements i.e. (curb and gutter, sidewalks, pedestrian ramps and cross pans).

SECTION 103

AWARD AND EXECUTION OF CONTRACT

103.01 AWARD

The contract shall be awarded to the lowest responsive and responsible bidder in the best interests of the City as specified in the Instructions to Bidders of the Invitation for Bids or Request for Proposals.

103.02 CONTRACTS EXECUTED

Each contract must be executed in three (3) original counterparts and no more. There shall be executed original counterparts of the Contractor's Performance, Labor and Material Payment and Maintenance Bonds in equal number to the executed original counterparts of the contract. Each Bond counterpart shall have an original Power of Attorney attached. One (1) copy will be delivered to the Contractor. The successful bidder shall provide compensation insurance and public liability and property damage insurance as outlined in the contract. The costs of executing the bonds, contract and insurance, including all notarial fees and expense, are to be paid by the Contractor to whom the contract is awarded.

103.03 VERBAL AGREEMENTS

No verbal agreements or conversations with any agent or employee of the City either before or after execution of the contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the contract.

103.04 CONTRACT SECURITY

The Contractor shall furnish good and sufficient Performance, Labor and Material Payment and Maintenance Bonds on the form attached hereto in an amount not less than the full amount of the contract price as security for the faithful performance of the contract, for the payment of all persons performing labor and furnishing material in connection with the work, and for all guarantees of materials and workmanship required in the Contract. If at any time during the continuance of the contract a surety on the Contractor's bond or bonds becomes irresponsible, the City shall have the right to require additional and sufficient sureties which the Contractor shall furnish within ten (10) days after written notice to do so. Any additional surety bonds shall cover the entire original contract amount and any increases thereto.

103.05 BOND FORMS

Bonds shall be furnished on forms prepared by the City. Copies of the City's Bond Forms will be included in the Exhibits Section of the Invitation for Bids.

103.06 INDEPENDENT CONTRACTOR

In the performance of the Contractor's obligations under this contract, it is understood, acknowledged and agreed between the parties that the Contractor is at all times acting and performing as an Independent Contractor, and the City shall neither have nor exercise any control or direction over the manner and means by which the Contractor performs the Contractor's obligations under this contract, except as otherwise stated within the contract terms. The Contractor understands and agrees that the contractor and the contractor's employees, agents, servants, or other personnel are not City employees. The Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to the Contractor or any of the Contractor's employees, agents, servants or other personnel performing services or work under this contract, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither the Contractor nor the Contractor's employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

SECTION 104

THE CONTRACT: FOLLOWING EXECUTION

104.01 MATERIALS

Unless otherwise stipulated in the contract, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light power, transportation, and other facilities necessary for the execution and completion of the work. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

104.02 SCHEDULE

The Contractor shall be responsible for planning, scheduling, and reporting the progress of the work to ensure timely completion of the work as called for in the Contract Documents. The Contractor shall prepare a Project Schedule that shall be used for coordination, for evaluation of progress, and for the evaluation of changes to the Contract. The Schedule shall include all activities, including those of subcontractors, Contractor's engineers and surveyors, and suppliers. Seasonal and weather constraints, utility coordination, railroad restrictions, right of way restrictions, traffic constraints, environmental constraints, other project interfaces, expected job learning curves and other constraints shall be considered when preparing the Project Schedule, including any phasing or sequencing of the work specified in the Contract Documents. Days scheduled as no work days shall be indicated. The Schedule shall consist of a Methods Statement as defined in part A. below and a progress schedule consisting of (1) a Critical Path Method (CPM) schedule as defined in part B. below, or (2) a Bar Chart schedule as defined in part C. below. A CPM Schedule shall be required if the contract exceeds \$250,000 or if the construction period exceeds 150 calendar days, unless the Contract Documents stipulate otherwise. The CPM Schedule shall utilize Primavera's Suretrak Project Manager software or be capable of being read and manipulated by Suretrak Project Manager software. The Schedule shall show all work completed within the contract time.

The Contractor shall submit two copies of all required schedule information as described below. Schedules, schedule updates, diagrams and reports using CPM shall also be submitted electronically in the appropriate software format. All schedules, diagrams, and reports shall include a title, project number, date of preparation, and the name of the Contractor.

The Bar Chart or Critical Path Method 90-day schedule shall be submitted at least 10 working days prior to the start of the work. The Project Engineer's review of the Schedule will not exceed 5 working days. Work shall not begin until the Schedule is accepted in writing, unless otherwise approved by the Project Engineer.

- A. **Methods Statement.** A Methods Statement shall be prepared for the prominent features listed in the Contract Documents, and for any feature not listed in the Contract Documents that the Contractor considers a controlling factor for timely completion. The Methods Statement shall be a

detailed narrative describing each feature and all work necessary to complete the feature. The Methods Statement shall be submitted with the Contractor's schedule. The following format is required.

1. Feature: Name of the feature;
2. Responsibility: Contractor, subcontractor, supplier, utility, etc. responsible for the feature;
3. Procedures: Procedures to be used to complete the work. The procedure to be used shall include general information regarding methods such as forming, excavation, pouring, heating and curing, backfill and embankment, trenching, protecting the work, etc. When separate or different procedures are to be employed by the Contractor due to seasonal or project phasing requirements, such differing procedures shall be described in the procedure statement;
4. Production Rates: The planned quantity of work per day for each feature;
5. Labor Force: The labor force planned to do the work;
6. Equipment: The number, types, and capacities of equipment planned to do the work;
7. Work Times: The planned time for the work to include:
 - a. number of work days per week
 - b. number of shifts per day
 - c. number of hours per shift

At the Project Engineer's request, the Contractor shall update the Methods Statement, or any part thereof, and submit it with the Job Progress Narrative Report or Schedule Update, whichever is earlier.

- B. Critical Path Method. CPM is a scheduling method which shows the interdependencies between work activities. The critical path is that path through the schedule which, if delayed, will cause a delay to project completion.

The progress schedule shall include as a minimum the prominent features of this project as listed in the Contract Documents. The progress schedule shall include all activities for all work on the project, including subcontracted work, delivery dates for critical material, submittal and review periods, milestone requirements and no work periods. Where the project has specific phases, each phase shall be described separately for each applicable prominent feature.

Construction activity duration shall not exceed 15 calendar days unless approved by the Project Engineer. Series of activities that have aggregate durations of five calendar days or less may be grouped in a single activity. For example, "form, reinforce, and pour pier" could be defined as a single activity rather than three. Single activities or a series of grouped activities of at least 1 calendar day duration may also need to be included in the Project Schedule as determined by the Project Engineer (e.g. same activities but noted separately by location).

Time Scaled Logic Diagram: This diagram shall show the logical progression of all activities required to complete the work defined in the Contract Documents. Activity information shall include activity ID, description, duration, early start and finish dates, late start and finish dates, total float, and responsibility.

1. 90-Day Schedule. The 90-day Schedule shall provide all necessary detail for procurement, construction and submittal activities required during the first 90 days of contract time. This submittal shall include a Time Scaled Logic Diagram.
2. Project Schedule. The Project Schedule submittal shall consist of a Time Scaled Logic Diagram and Schedule Report. It shall be prepared in full and submitted to the Project Engineer within 45 calendar days after the Project Engineer's acceptance of the 90-day Schedule. The Project Engineer's review of the Project Schedule will not exceed one week. Revisions required as a result of the Project Engineer's review shall be submitted within one week. Work shall not continue beyond the initial 90 days until the Project Schedule is accepted in writing, unless otherwise approved by the Project Engineer.

The Project Schedule shall cover the time from the Day of Notice to Proceed to the predicted completion date.

The Schedule Report shall tabulate for each activity the activity ID, description, duration, earliest start and finish date, latest start and finish date, total float time, and responsibility. Other reports and scheduling documentation may be requested by the Project Engineer

3. Schedule Updates. The Contractor shall update the 90-day Schedule or the Project Schedule to reflect actual construction progress of all work activities on the project. Updates shall show the previous 30 days progress and a 60-day projection for all work started, completed, or in progress during this three month window.

The Project Schedule shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Project Engineer before the payment of the progress pay estimate is approved.

Each of the diagrams, charts, and reports shall comply with the requirements for the Project Schedule above, except that they shall also include the actual completion dates and percentages of completion for the appropriate activities.

- C. Bar Chart. The Bar Chart shall be time scaled and shall show the following:

1. The prominent features, as listed in the Contract Documents.
2. Any feature not listed in the Contract Documents that the Contractor considers a controlling factor for timely completion.
3. The number of days required to complete each feature and its relationship in time to other features.
4. Sufficient space for each feature to permit two additional plots parallel to the original time span plot.
5. The anticipated delivery dates for equipment or materials in any feature that could affect timely completion of the project.
6. Critical completion dates for any activity within any feature that could affect timely completion of the project.
7. Connecting lines between features that show the intended progression of activities.

The Project Schedule shall cover the time from the Day of Notice to Proceed to the predicted completion date. The Project Schedule shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Project Engineer before the payment of the progress pay estimate is approved. The Contractor shall provide a copy of the original bar chart showing, for each feature, the days actually worked and the anticipated days required to complete.

A Job Progress Narrative Report shall be submitted bi-weekly as a minimum and with all Schedule updates. It shall detail the description of job progress, problem areas, current and anticipated delaying factors and their anticipated effects, impacts to job milestones or project completion, any corrective action proposed or taken, and any minor revisions to the Schedule. If the Job Progress Narrative Report indicates problem areas and impacts to job milestones or project completion, a revised Schedule Update shall also be submitted as specified below.

Revision of the Schedule may be required, as determined by the Project Engineer, for: a major revision in the schedule logic or methods of construction; the addition, deletion, or revision of activities required by contract modification; delays in milestones or the completion of the project; or for prosecution of work that revises the phasing or staging which is represented on the plans or on the progress schedule. If in the opinion of the Project Engineer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve project progress, including those steps that may be required by the Project Engineer, without additional costs to the City. In those circumstances where the Contractor is behind schedule, the City may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit such changes and revisions to the schedule to the Project Engineer for approval that will demonstrate how the approved rate of required progress will be regained. Failure of the Contractor to comply with the requirements of the Project Engineer under this subsection shall be grounds for a determination by the City that the Contractor is not prosecuting the work with sufficient diligence to ensure timely completion of the contract as required.

If it is determined that a revision to the Schedule is required, it shall be provided to the Project Engineer for review within 15 calendar days of written notification. The Project

Engineer's review of the revised schedule will not exceed 5 working days. Revisions required as a result of the Project Engineer's review shall be submitted within 5 working days. When accepted by the Project Engineer in writing, the revised schedule shall become the Project Schedule.

The Contractor shall participate in the Project Engineer's review and evaluation of the submittals. Meetings will be held to review progress and planning when requested by the Project Engineer or Contractor. The Project Engineer may request additional project scheduling information and documentation as deemed necessary, including reports and other information that may be reasonably generated using CPM software if required by the contract.

The Contractor shall prosecute the work according to the Schedule. The Contractor shall be responsible for assuring that its subcontractors, suppliers, and engineers/surveyors, at any tier, also prosecute the work according to the Schedule. The City shall be entitled to rely on the Contractor's Schedule for planning and coordination.

Acceptance of the Contractor's Schedule by the Project Engineer is not to be construed as relieving the Contractor of obligation to complete the contract work within the contract time allowed for the portion of the work or the entire Contract, or granting, rejecting or in any other way acting on the Contractor's request for extension of contract time, or claims for additional compensation.

All costs relating to preparation, submittal, and acceptance of the Schedule, reports and revisions, and all requirements of this subsection will not be paid for separately, but shall be included in the work.

Failure of the Contractor to comply with the requirements of this subsection shall be grounds for a determination by the Project Engineer that no further progress payments are to be made until the Contractor is in full compliance.

D. Project Coordination. The Contractor shall be responsible to coordinate and schedule their work to include utility work anticipated or otherwise. Various City and private utility agencies may be working to install and/or inspect their utilities within the project area. Reasonable delays should be expected for utility lowering, relocations and placement. These delays shall not be reason for granting any monetary change or performance time alteration to the contract. As a minimum, the Contractor's Project Schedule shall reflect coordination with the following:

1. City of Colorado Springs City Engineering Division
2. City of Colorado Springs Traffic and Transportation Engineering Division
3. Colorado Springs Utilities (water, wastewater, gas, electric)
4. City of Colorado Springs Parks, Recreation and Cultural Services Department
5. Telecommunication Companies

- E. Contractor Early Finish or Voluntary Acceleration. Early finish or voluntary acceleration of the schedule by the Contractor is acceptable provided:
1. At the time the Contractor submits the Project Schedule indicating an early finish or voluntary acceleration, the City is notified in writing of actions on the City's part necessary to accommodate the change(s).
 2. The City agrees to such change(s) in writing.
 3. The City is compensated by the Contractor for any inconvenience or expense associated with the change(s).
 4. There is no increased Contract cost.

104.03 SCHEDULE OF VALUES

- A. Promptly following the execution of the contract documents for all lump sum contracts, the Contractor shall prepare and transmit to the Engineer two copies of an itemized breakdown showing the unit quantities of each major construction item and the corresponding unit prices. Such unit prices shall contain all costs including profit and overhead of each item complete in place. The total cost of all the items shall equal the contract price for the project. This breakdown, when approved by the Engineer, will be used primarily in determining payment due the Contractor on periodical estimates. If, in the opinion of the Engineer, any unit price submitted by the Contractor is unbalanced, a detailed breakdown of the items contained in the unit will be required.
- B. For contracts bid on a unit price basis, payment shall be made based on the actual number of units installed or performed that are complete, however, payment shall not exceed the total contract amount unless previously approved by Change Order.

104.04 SURVEYS

- A. Unless otherwise specified in the Contract documents, the City will furnish all site surveys, easements, pipeline licenses, etc., necessary to authorize construction of any permanent works required in the Contract, where such work is to be done on property other than the City's.
- B. The project limits of construction shall be within the public right-of-way and/or easements. The Contractor shall not trespass on premises outside of the limits of construction for this project, unless permission to do so is granted by the property owner in writing. Copies of any such grant shall be furnished to the City prior to the performance of any work outside the limits of construction.

104.05 TAXATION

The Contractor's payment or exemption of State of Colorado, El Paso County and City Sales and Use Taxes shall be as specified in the as specified in the Instructions to Bidders of the Invitation for Bids or Request for Proposals.

104.06 ASSIGNMENT OF CONTRACT

No assignment or transfer by the Contractor of this contract or any part thereof or of the funds to be received thereunder by the Contractor will be recognized unless such assignment has had the prior written approval of the City and the surety has been given due notice of such assignment. Such written approval by the City shall not relieve the Contractor of the obligations incurred by them under the terms of this contract. In addition to the usual recitals in assignment contracts, the following language must be set forth:

It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

104.07 SUBCONTRACTS

The Contractor shall as soon as practical after signing the contract, notify the Project Engineer/Manager in writing, giving the names and qualifications of all subcontractors proposed for work within fifteen (15) business days of notice of award. The City shall have the right to reject subcontractors who are debarred or suspended from doing business with the City of Colorado Springs. The Contractor shall notify the Engineer of each subcontract he awards, giving:

- A. Name, address, and telephone number of the subcontractor
- B. Branch of work covered
- C. Total price of subcontract
- D. Date of subcontract

It shall be the responsibility of the Prime Contractor to file with the Engineer copies of applicable permits and licenses required to do the subcontracted work.

104.08 OTHER CONTRACTS

The City may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with City employees and shall carefully adapt their scheduling and performance of the work to accommodate the additional work, heeding any direction that may be directed by the Project Engineer/Manager. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractor.

SECTION 105

CONSTRUCTION SITE

105.01 LANDS TO BE USED FOR WORK

- A. The City shall provide as indicated the lands upon which the work under this contract is to be done, right-of-way for access to same, and such other lands which are designated on the Drawings for the use of the Contractor, unless otherwise noted in the contract documents.
- B. The Contractor shall provide at their expense and without liability to the City any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. All such costs will be considered as having been included in the bids for the contractor.

105.02 STORAGE OF MATERIALS

The Contractor shall confine their equipment, apparatus, the storage of materials and operations of Contractor's workmen to limits indicated by law, ordinances, permits, or directions of the City and shall not encumber the project site with materials or equipment not necessary for the project.

105.03 LOADING OF STRUCTURES

The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger the structure's safety. The Contractor shall enforce the Engineer's instructions regarding signs, advertisements, fires, and smoke.

105.04 SANITARY PROVISIONS

The Contractor shall provide and maintain on the construction work at all times suitable sanitary facilities for use of those employed on this contract without committing any public nuisance. All toilet facilities shall be subject to the approval of the El Paso County Health Department.

105.05 ACCIDENT PREVENTION

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of all Federal, State and Municipal laws and any other codes relating to the public safety, shall be strictly observed, and the contractor shall, at all times, whether or not so specifically directed by the Engineer, take the necessary precautions to ensure the protection of the public.

Piling, sheeting and shoring shall be utilized where required to prevent any excessive widening or sloughing of the trench which may be detrimental to human safety, traffic flow, the pipe being placed, trees, or to any existing structure. Excavated materials shall be placed a safe distance from the sides of the trench. Heavy equipment shall not be used or placed near the sides of the trench unless the trench is adequately braced. If the Engineer or any City Safety Officer or their designated representatives become aware of failure to comply with applicable safety regulations, the Engineer or City Safety Officer or their designated representatives may inform the contractor who shall take immediate steps to remedy the noncompliance. The Engineer or City Safety Officer or their designated representatives shall give written notification to the contractor directing them to correct the unsafe acts or conditions. If the contractor fails to comply with such a notification, the Engineer or City Safety Officer or their designated representatives may issue a "stop work" order in accordance with Section 108.05 of the General Provisions of this contract, and work shall only be resumed after adequate corrective actions have been taken to comply with the safety deficiencies the Contractor has been notified of. Stoppage of work because of noncompliance with prescribed accident precaution measures shall not be subject to claim for changed condition or changes in work, nor for extension of completion time.

105.06 PROTECTION OF THE PUBLIC WORKS AND PROPERTY

- A. The Contractor shall provide and maintain all necessary watchmen, barricades, lights, and warning signs and take all necessary precautions for the protection of the public. He shall continuously maintain adequate protection of all work from damage, and shall take all reasonable precautions to protect the City's property from injury or loss arising in connection with the contract. The Contractor shall make good any damage, injury, or loss to their work and to the property of the City resulting from lack of reasonable protective precautions except such as may be due to errors in the contract documents, or caused by agents or employees of the City. The Contractor shall check all cautionary signs at least once a day during this contract.
- B. The Contractor shall continuously maintain adequate protection of all their work from damage and shall protect the City's and adjacent property from injury arising in connection with this contract.
- C. The Contractor will be responsible for any and all damage to property, public or private, that may be caused by their operations in the performance of this contract, and the Contractor shall defend any suit that may be brought against themselves or the City on account of damage inflicted by their operations, and shall pay any judgments awarded to cover such damage.
- D. The contractor shall be responsible for the restoration of all existing surface or subsurface improvements where damaged as a result of construction at no additional cost to the City.

105.07 PUBLIC ROADS

The Contractor in executing the work on this project shall not unnecessarily impede or interfere with traffic on public highways or streets. Detours, including surfacing, guard rails, temporary bridges and culverts, as may be shown on the drawings, or ordered by the Engineer to accommodate the general public, residents adjacent to the improvements, and the United States mail shall be provided and maintained by the Contractor in a good workmanlike manner. Any call out of City Barricade Crews shall be charged to and paid for by the Contractor.

All work done within the public right-of-way and/or easements requires an approved Traffic Control Plan by the City Traffic Engineering Division.

The Contractor shall provide and maintain in place all barricades, warning signs, lights and other safety devices required to protect the work, divert traffic, and warn pedestrians of open excavation, unfilled trenches, and other areas or conditions which might be hazardous or dangerous during the daylight or dark. Detour routings must first be submitted to the Traffic Engineer for review and approval and shall be signed for the entire route of the detour as required to return the traffic to their street or origination. Detours shall be maintained throughout the period of construction in such a manner as to provide the least amount of disruption to normal traffic flow

All signing and barricading shall conform to the latest edition of the Manual of Uniform Traffic Control Devices for Street and Highways, refer to Section 800. The Traffic Engineer may require flag persons or off-duty police officers for traffic direction. Any call out of the City Barricade crews shall be charged to the Contractor.

105.08 FAILURE TO MAINTAIN SAFE SITE

In case of injury to persons or property by reason of failure to erect and to maintain necessary barricades, safeguards, and signals, or by reason of any act of negligence of the Contractor, or Contractor's subcontractors, agents, or employees, during the performance of this contract, the City may withhold payments due the Contractor so long as shall be reasonably necessary to indemnify the City on account of any such injuries, but the City's payment or failure to pay any sum shall not be considered as a waiver of its right under the indemnity provision of this contract.

105.09 POLLUTION

The Contractor shall at all times ensure compliance with applicable Federal, State, and Municipal air, water, and noise pollution laws and ordinances. The Contractor shall at all times have the proper sprinkling equipment available and shall apply water in the amount determined by each site condition or as directed by the Engineer. The Contractor shall obtain all necessary permits at Contractor's expense, which may include, but not be limited to, El Paso County or a State Air Emission permit, State of Colorado Construction Activity permit, State of Colorado Dewatering permit and Section 404 Corp of Engineers permit, unless otherwise specified in the Invitation for Bids.

105.10 CLEAN-UP

The Contractor shall at all times keep the work area including storage and staging areas, free from accumulations of waste materials. The Contractor is also responsible for any costs associated with cleanup of debris from the work site or storage areas that may inadvertently be scattered outside the area by weather or vandalism. Upon completion of the work, the Contractor shall leave the work area in a clean neat, and orderly condition satisfactory to the Project Engineer/Manager.

105.11 PROTECTION OF EXISTING CURBS, GUTTERS AND DRIVEWAYS

The Contractor shall exercise care in protecting existing curbs, gutters and driveways. Curbs, gutters and driveways damaged by the Contractor's operations shall be removed and replaced by the Contractor at Contractor's expense.

105.12 TEMPORARY CONSTRUCTION

All temporary facilities, including the Contractor's field office which they may maintain at the site, and additional offices erected by subcontractors, shall be neatly constructed and arranged on the site in an orderly manner. The Contractor shall prepare and submit to the Engineer, for approval prior to starting work, a construction plan layout, showing arrangement of storage areas, temporary buildings, equipment, and work areas. The Contractor shall provide suitable weather-tight storage sheds of capacity required to contain all materials which might be damaged by storage in the open. The Contractor shall at all times keep copies of all contract documents readily accessible at their office at the site.

105.13 TEMPORARY WATER SUPPLY

The Contractor shall provide at Contractor's own expense temporary water connections and water supply necessary for the prosecution of the work and permit all contractors on the work to use this supply at a reasonable prorated charge, or by submetering. The Contractor shall pay for all water consumed in the work, and shall arrange with municipal authorities for temporary connections and payment of service charges. (Use most current Code of the City of Colorado Springs). Upon completion of the contract work, all temporary waterlines shall be removed.

105.14 TEMPORARY ELECTRIC LIGHT AND POWER

The Contractor shall arrange with the City Utility Departments for temporary electric light and power necessary for the prosecution of the work. The Contractor shall pay for all electric current consumed, and shall permit all contractors on the work to use this supply at a reasonable prorated charge, or by submetering.

105.15 TEMPORARY HEAT

The Contractor shall provide adequate, temporary heat required during construction. Until the building or work area is enclosed, heavy tarpaulin shall be used to enclose any space requiring heating or protection from weather during construction operations. After the heating plant is in operating condition and the building is enclosed, heat may be provided from the permanent heating plant if such is approved by the Engineer. In such case, the Contractor shall arrange to operate the plant, connect permanent or temporary radiation or unit heaters, and so maintain the plant during operation that it will be turned over to the City undamaged at the completion of the work. The Contractor shall provide all fuel required. In no case shall salamander heating be used in finished or plastered surfaces; instead, gas-steam radiators, unit heaters, or other suitable and approved means shall be used if the permanent heating plant is not available.

105.16 TEMPORARY ENCLOSURES

The Contractor shall provide and maintain temporary enclosures for the work as may be required to permit continuation of interior work during inclement weather, if wall and roof construction has progressed sufficiently to make interior work possible.

SECTION 106

INSURANCE AND INDEMNITY

106.01 CONTRACTOR'S INSURANCE

The Contractor shall secure and maintain during the life of this contract such insurance policies as will protect Contractor and Contractor's Subcontractors, the City, and each of their officers, agents and employees from claims for bodily injuries, death, or property damage, which may arise from operations under this contract whether such operations be by the Contractor or by any Subcontractor or anyone employed by them directly or indirectly. The Contractor shall not commence work under this contract until Contractor has obtained all insurance required and such insurance has been approved by the City of Colorado Springs. Also, the Contractor shall not allow any Subcontractor to commence work on any subcontract until all similar insurance required of the Subcontractors has been obtained. The following insurance policies are required:

Worker's Compensation Insurance - Contractor shall take out and maintain during the period of this contract, Colorado Worker's Compensation Insurance for the Contractor and all employees of the Contractor. If any service is sublet by the Contractor, the Contractor shall require the subcontractor to provide the same coverage for the subcontractor and the subcontractor's employees. Worker's Compensation Insurance shall include occupational disease provisions covering any obligations of the Contractor in accordance with the provisions of the Worker's Compensation Act of Colorado.

Employer's Liability - The Contractor shall take out and maintain during the life of this contract, Employer's Liability Insurance with a limit of \$100,000 in an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract and the Contractor shall require each of his Subcontractors similarly to maintain Employer's Liability Insurance on his employees.

Public Liability - The Contractor shall maintain during the life of this contract such Public Liability Insurance as shall protect the Contractor against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from operations under this contract whether such operations be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by either of them.

The Public Liability Insurance required by the preceding sub-paragraph shall include the following extensions of coverage:

1. The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto.
2. X.C.U. Coverage - If the contract requires any work procedures involving blasting, excavating, tunneling, or other underground work, the City may require Standard Blasting or Explosion Coverage, Standard Collapse Coverage and Standard Underground Coverage, commonly referred to as XCU property damage liability

coverage. If this coverage is required, it will be specified in the contract and the limits shall be specified in the Special Provisions.

3. The property damage coverage shall include a Broad Form Property Damage Endorsement.
4. Contractual Liability coverage shall be included.
5. Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by Contractor's Subcontractors.
6. Products Liability and/or Completed Operation coverage shall be included.

Automobile Liability -The Contractor shall take out and maintain during the life of the contract such comprehensive Automobile Liability Insurance as shall protect the Contractor against claims for damages resulting from (1) bodily injury, including wrongful death, and (2) property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for the Contractor in any capacity in connection with the carrying out of this contract.

- A. Other forms of insurance shall also be provided if specified in the Special Provisions.
- B. The minimum acceptable policy limits for each project shall be as set forth below or as specified in the Special Provisions. The required insurance coverage shall in no way lessen or limit the liability of the Contractor under the terms of the contract. The Contractor shall procure and maintain at Contractor's own cost and expense, any additional kinds and amounts of insurance that in Contractor's own judgment, may be necessary for his proper protection in the prosecution of the work.

Statutory Workmen's Compensation

<u>Insurance Coverage</u>	<u>Minimum Limits</u>
Employer's Liability each person	\$ 100,000

Comprehensive General Liability

<u>Insurance Coverage</u>	<u>Minimum Limits</u>
Bodily Injury:	
each occurrence	\$ 500,000
aggregate	\$1,000,000
Property Damage:	
each occurrence	\$ 500,000
aggregate	\$ 500,000

Comprehensive Automobile Liability

Bodily Injury:	
each person	\$ 500,000
each accident	\$ 500,000
Property Damage:	
each accident	\$ 500,000

- C. The Contractor and all Subcontractors shall include the City of Colorado Springs and the City's officers, agents and employees as "additional insured parties" on each policy for each project, except for Worker's Compensation Coverage.
- D. The Contractor shall furnish the Project Engineer with applicable Insurance Policies or Certificates of Insurance with required insurance coverage. They shall contain a provision that thirty (30) days written notice shall be given to the City prior to cancellation or revisions to any of the insurance. These Policies or Certificates of Insurance will be subject to City approval prior to execution of the contract.

106.02 INDEMNIFICATION

Contractor agrees that the Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, costs, including attorney's fees, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Contractor's obligations or actions under this contract, or from any act or obligation of any subcontractor, laborer, materialman or agent of the Contractor.

This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable for or by the Contractor or any subcontractor, manufacturer or supplier under Workmen's Compensation Act, disability benefit acts or other employee benefit acts.

106.03 THIRD PARTY LIABILITY

It is specifically agreed between the parties executing this contract that this contract is not intended by any of the provisions to create in the public or any member thereof any third party beneficiary rights whatsoever, or to authorize anyone not a party to this contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this contract.

106.04 RISK INSURANCE

Unless otherwise set forth in the Contract Documents, the City shall not maintain risk insurance on the project.

SECTION 107

ROYALTIES, PATENT INFRINGEMENTS, SPECIAL LICENSES AND PERMITS

107.01 ROYALTIES AND PATENTS

The Contractor shall pay all applicable royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and save the City harmless from loss on account thereof except that the City shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, unless the City has notified the Contractor prior to the signing of the contract that the particular process, design, or product is patented or is believed to be patented.

107.02 PERMITS, LICENSES AND REGULATIONS

Permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor. The Contractor shall be responsible for all water and wastewater tap fees and water and wastewater connection fees as set forth in the Code of the City of Colorado Springs, as amended. Projects that involve Building Permits and sprinkler systems will require water or wastewater connection fees or both.

Licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the Plans and Specifications are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work.

Prior to the start of construction, the Contractor shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. Copies of the fully executed permits shall be furnished to the Engineer. It is the responsibility of the Contractor to be aware of the terms and conditions of all permits, and it is the Contractor's responsibility that the terms and conditions are satisfied." (REF. 102.06, 105.09)

SECTION 108

WORK PROVISIONS AND RULES

108.01 COMMENCEMENT AND COMPLETION OF WORK

- A. Preconstruction Conference. After issuance of Notice of Award, or as otherwise established by the City, a preconstruction conference shall be held for review of the construction schedule, Contractors written list of Subcontractors and suppliers, project contracts, utility support plan, water control plan, Traffic Control Supervisor name and telephone number, gradations, test results, certifications, to review procedures for handling shop drawings and other submittals, processing applications for payment, and other pertinent items.
- B. The Contractor shall commence work within ten (10) calendar days after the date specified on the Notice to Proceed and complete the contract within the number of calendar days or by the date specified in the proposal form. (Unless otherwise noted the number of days set out in proposal form are calendar days).
- C. The dates fixed for commencement and completion of the work may be extended by the Engineer. All requests for extension of time by the Contractor shall be made in writing to the Engineer and shall set forth the reasons for such requests. The Engineer shall fix the period of extension, if any. The Engineer's decision shall be binding upon the parties hereto. Requests for extension of time received twenty (20) or more days after the occurrence of the delay will not be honored. No requests for extension of time shall be honored if submitted after the completion date.
- D. If satisfactory execution and completion of the contract shall require work or materials in greater amounts or quantities other than those set forth in the contract, then the contract time shall be adjusted at the time of the execution of the Change Order. No allowance will be made for delays or suspension of the prosecution of the work due to the fault of the Contractor.

108.02 FAILURE TO COMPLETE WORK ON TIME, LIQUIDATED DAMAGES

If the Contractor fails to fully perform and complete the work in conformity to the provisions and conditions of the contract within the specified time limit set forth in the contract, including any extensions granted hereto, the Contractor shall pay to the City for each calendar day of delay until such time the contract is complete, liquidated damages at the applicable daily rate below. The amounts shown are considered to be liquidated damages to reimburse the City for the additional cost of construction engineering and contract administration services and in no case are considered a penalty.

Original Contract Amount	Amount of Liquidated Damages Per Day
Less than \$50,000	\$300.00
\$50,000 to \$100,000	\$500.00
\$100,000 to \$500,000	\$700.00
\$500,000 to \$1,000,000	\$900.00
Over \$1,000,000	\$1500.00

108.03 WORK IN BAD WEATHER

No construction work shall be done during stormy, freezing, or inclement weather, except such as can be done satisfactorily, and in a manner to secure first class construction throughout, and then only subject to permission of the Engineer.

The granting of a time extension for inclement weather does not imply or guarantee that additional compensations for incidental and appurtenant work caused by such weather will be approved or authorized by the Engineer. The Contractor is instructed to include as part of the Contractor's total bid price the costs for such weather delays as can be reasonably anticipated. The Engineer will be the sole judge as to the reasonableness of delays for inclement weather.

108.04 EMERGENCY WORK

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor is, without special instructions or authorization from the Engineer, hereby permitted to act at Contractor's discretion to prevent such threatening loss or injury. Contractor shall also act, without appeal, if so authorized or instructed by the Engineer. Any compensation claimed by the Contractor on account of emergency work shall be determined by agreement or in accordance with the changes in Work Provision of this contract.

108.05 AUTHORITY OF THE ENGINEER

- A. The Engineer shall perform technical inspection of the work. The Engineer has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the contract. The Engineer shall also have authority to reject all work and materials, which do not conform to the contract and to decide questions, which arise in the execution of the work.

- B. The Engineer shall, within a reasonable time after their presentation to the Engineer, make decisions in writing on all claims submitted to the City or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the contract documents. The Engineer's decisions shall be final.
- C. **Suspension of Work**
The Project Engineer/Manager may order the Contractor, by giving fifteen (15) days written notice, to suspend, delay, or interrupt all or any portion of the work required by the contract for a period of up to 10 ten calendar days, for the convenience of the City at no additional cost.

108.06 CONSTRUCTION OBSERVATION AND INSPECTION

- A. The Engineer shall at all times have access to the work and the Contractor shall provide proper equipment, materials and labor as required for such access and inspection.
- B. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. The Engineer shall have the right to reject materials and workmanship, which are defective, or require their correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be removed from the premises without charge to the City. If the Contractor does not correct such condemned work and remove rejected materials within a reasonable time fixed by written notice, the City may remove them and charge the expense to the Contractor.
- C. Should it be considered necessary or advisable by the Engineer at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish necessary facilities, labor and materials. If such work is found to be defective in any material respect due to fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus fifteen (15) percent, will be allowed the Contractor.
- D. All materials to be incorporated in the work, all labor performed, all tools, appliances, and methods used shall be subject to the inspection and approval or rejection of the Engineer.
- E. If the Engineer shall point out to the Contractor, Contractor's foreman, or agent any neglect or disregard of the contract provisions, such neglect or disregard shall be remedied and further defective work be at once discontinued.

- F. The Contractor shall execute the work only in the presence of the Engineer or authorized representative, unless provision has been made for the work to proceed without complete engineering supervision or inspection. The presence of the Engineer or authorized representative shall in no way relieve the Contractor of the responsibility of this contract, or be any warrant for the furnishing of bad material or poor workmanship.
- G. The observation of the work by the Engineer is intended to aid the Contractor in applying labor, materials, and workmanship in compliance with the contract provisions. Such observation, however, shall not relieve the Contractor from any of Contractor's contract obligations.

108.07 CONTRACTOR COOPERATION

- A. Discrepancies: If the Contractor, as the work progresses, finds any discrepancies between the Plans and physical conditions or any errors in the Plans or layout as given by the stakes or instructions, it shall be the Contractor's duty to inform the Engineer in writing and the Engineer shall address such discrepancy in a reasonable period of time. Any work done after such discovery until authorized will be done at the Contractor's risk.
- B. Workmen, Methods and Equipment: Permission from the Engineer to use any particular methods, equipment or appliances shall not be so construed as to relieve the Contractor from furnishing other equipment or appliances or adopting other methods when those in use prove unsatisfactory to the Engineer, or as to bind the Engineer to accept work which does not comply with the contract.
- C. All work under this contract shall be performed in a skillful and professional manner. The Project Engineer/ Manager shall have the authority to notify the Contractor in writing, that the Contractor remove from the work site any employee the Project Engineer/Manager deems incompetent, careless, or otherwise objectionable to the general public or the City of Colorado Springs.

108.08 CONTRACTOR'S RESPONSIBILITY FOR WORK

- A. Until the work is accepted by the Engineer as evidenced by the issuance of the Certificate of Completion, the Contractor shall have the charge and care thereof and shall take every necessary precaution against injury or damage to any part thereof by action of the elements or from any other cause, whether arising from the execution or from the nonexecution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before its completion and acceptance and shall bear the expense thereof.

- B. The Contractor shall be responsible for the preservation of all public and private property, trees, fences, monuments, and other property, along and adjacent to the improvements and shall use suitable precautions necessary to prevent damage to pipes, conduits, and other underground structures. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or in consequence of the nonexecution thereof on the part of the Contractor, such property will be restored by the Contractor and at Contractor's expense to a condition similar, or equal to that existing before such damage or injury to the satisfaction of the City's Project Manager.
- C. It shall be the responsibility of the Contractor, when moving or operating equipment, to make all arrangements for temporary crossings of telephone, transmission, pipe lines, railroad tracks, and irrigation ditches. This work shall not be paid for as a separate item but shall be considered as incidental to the project.

108.09 PROTECTION OF UTILITIES

- A. The Contractor's attention is directed to the fact that utilities may encroach on the construction of this project, and also to the importance of protecting all public/private utilities encountered on this project. These may include telecommunications, cablevision, traffic signal lines and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities.

Any information concerning underground utilities shown on the drawings is intended to be merely an aid to the Contractor. The accuracy of information with respect to underground utilities is not guaranteed. The Contractor shall make their own investigation, including exploratory excavations, to determine the locations and type of existing mains or service laterals or appurtenances when their presence can be inferred from the presence of other visible facilities, such as building, manholes, inlets, meters and junction boxes, on or adjacent to the site of the work. If the Contractor discovers utility facilities not identified in the plans or specifications or in a position different from that shown in the plans and specifications, the Contractor shall immediately notify verbally and in writing the Engineer and Owner of the utility facility.

- B. Before any excavation is begun in the vicinity of water lines, railroad tracks, or structures, sewer lines, telecommunication conduits or cablevision line, each utility company, department, or company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility concerned is at the site.

- C. All utilities encountered must be kept in operation by the Contractor and must be protected and/or repaired at the Contractor's own expense, unless otherwise specified in the contract documents. The Contractor shall be held liable for all damages to any and all public utilities encountered on the project, which damages are due to the Contractor's operations. Such damages shall include all physical damages to utilities and also all damages due to interruption of service of such utilities, when such damages and interruptions are caused by the Contractor's operations.
- D. Where alterations or moving of utilities is not required to permit construction of the project, the Contractor shall take such measures as the Engineer may direct to properly protect these utilities throughout his construction operations and shall cooperate at all times with the proper authorities and/or owners in maintaining service of railroads, conduits, pole lines, transmission lines, pipe lines, sewers, etc., affected by this project.
- E. The costs of damages due to the Contractor's operation or the cost of protecting utilities where alteration or moving is not required to permit construction of the project shall be included in the original contract price for the project.
- F. Should any pipe line, water lines, or gas mains, electrical conduits, sewer pipes, overhead wiring, telecommunication lines, power lines, or any other such utilities, not specifically mentioned and provided for elsewhere as a part of this contract, have to be moved, repaired, reconditioned, or revised due to the construction, or moved temporarily to permit construction of the project the party or parties owning and operating such utilities shall perform the actual work of moving, repairing, reconditioning, or revising such utilities. The cost of this work shall be borne by the utility companies involved, unless other agreements are reached with the City.
- G. Existing Utilities
 - 1. Existing Gas Lines: As of April 1, 1983, Federal law requires anyone who uncovers a gas line to report it to the gas company and allow it to be inspected by the gas company personnel before it is backfilled. The Gas Department is to be notified prior to any excavation around gas lines. A Gas Department inspector is to be notified and present on site prior to construction activities around gas lines.
 - 2. Existing Sewer Mains and Services: All relocation, replacement protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Wastewater Department Standard Specifications. Minimum 48 hours notice must be given to the Wastewater Department prior to any related work.

The Contractor shall adjust sanitary sewer manhole rims to an elevation acceptable to the City Wastewater Department. The Contractor shall contact the City Wastewater Department twenty-four (24) hours prior to manhole rim adjustments.

3. Existing Water Mains and Services: All relocation, replacement or protection shown on the plans or determined necessary by the inspector shall be performed according to the latest Water Department Standard Specifications and the Water Service Standard Specifications. Minimum 48-hour notice must be given to the Water Department prior to any related work. The Water Department reserves the right to schedule any operations at their discretion and to provide for any requirements determined necessary to perform the work. The Contractor shall coordinate with the Water Department and receive their approval prior to performance of the work.

H. Utility Support Systems:

1. If required by the contract documents, or requested by the Engineer, the Contractor shall submit shop drawings for the method of temporary support for all existing utilities during construction. The temporary support details for existing utilities shall be submitted for review and approval prior to performance of the work. Shop drawings must bear the seal of a Professional Engineer registered in the State of Colorado, unless so waived by the City.
2. Regardless of City approved shop drawings, the Contractor shall be responsible for the satisfactory support of the utility system and any damages that may occur to the utility involved.

- I. Electric Utility Installation: Any electric facilities unless otherwise noted are to be relocated or modified by the City of Colorado Springs Electric Department. The Contractor shall coordinate the work with the Electric Department and the Electric Department's Contractor.

- J. Telecommunication Agencies: Any telephone facilities unless otherwise noted are to be relocated or modified by the respective private utility company. The Contractor shall coordinate the work with the respective private utility company.

- K. Cablevision: The television utilities are to be relocated by the appropriate telecommunication company. The Contractor shall coordinate the work with the appropriate telecommunication company.

108.10 LABOR

- A. The Contractor shall employ only competent and skilled workmen and foremen in the conduct of work on this contract. The Contractor shall at all times enforce strict discipline and good order among Contractor's employees. The Engineer shall have the authority to order the removal from the work of any Contractor's employee who refuses or neglects to observe any of the provisions of these Plans or Specifications, or who is incompetent, abusive, threatening, or disorderly in conduct, and any such person shall not again be employed on the project.
- B. Colorado labor shall be employed to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on this project, as required and defined in Section 8-17-107 C.R.S. 1973.
- C. Eight (8) hours shall constitute a day's labor and Monday through Friday shall constitute a workweek. In no event shall the City be responsible for overtime pay.

108.11 EMPLOYMENT OF LABOR

The Contractor shall comply with, and protect and hold the City harmless from any violation of all laws and lawful rules and regulations, both of the State of Colorado and of the United States, relating to Workmen's Compensation, unemployment compensation, Social Security, payment for overtime, and all other expenses and conditions of employment under this contract.

108.12 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, sex, color or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color or national origin.

108.13 FEDERAL FUNDS

If this contract is a Federally assisted construction contract all applicable federal requirements, terms and conditions, provisions and forms will be included in the bidding documents. Additionally, the Contractor agrees as follows:

- A. The Contractor shall complete and submit with its bid all federal forms and certifications included in the bidding documents.
- B. The Contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- C. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- D. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Secretary of Labor, State of Colorado Civil Rights Commission and any other governmental agency entity which may be assisting with the funding under this contract for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- E. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or Federally assisted construction contracts in accordance with the procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or otherwise provided by law.

- F. The Contractor include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the city, state, or any federal governmental entity may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the city, state, or any federal governmental entity, the Contractor may request the city, the state, or the United States to enter into such litigations to protect the interests of such governmental entity.

108.14 SUPERINTENDENCE

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Engineer and with other Contractors or utility company employees in every way possible. The Contractor shall have at all times, on the work, as Contractor's agent, a competent superintendent capable of reading and thoroughly understanding the Plans and Specifications, and who shall have the necessary authority to receive and promptly execute the instructions and orders from the Engineer or the Engineer's authorized representative. Such superintendent shall be furnished irrespective of the amount of work sublet. The Contractor shall supply the Engineer with a list of phone numbers at which the Contractor, his superintendent and foreman can be reached at any time. The assigned Superintendent must adhere to the cooperation requirements specified in Section 108.07 and is subject to removal if so ordered in writing by the Engineer/Project Manager.

108.15 PREPARATION

All vegetation, stumps, and debris and other objectionable objects shall be removed from the area staked out by the Engineer, and where necessary from the area immediately adjacent thereto. Such debris shall be hauled from the site of the construction and wasted as directed by the Engineer.

108.16 STAKING WORK

- A. The Engineer shall provide reference points (horizontal and vertical control) only, unless otherwise noted in the bid proposal and project specifications. The Contractor shall engage the services of a licensed surveyor or surveying firm (hereinafter referred to as the Surveyor) to be approved by the Engineer. The Surveyor shall perform all detailed construction layout and staking including the staking of all storm sewer, street improvements, and utility relocations in accordance with the plans and specifications. The Contractor shall be responsible for the correctness and accuracy of the detailed layout of finished structures.

- B. Any instrument man or survey assistant employed on the work by the Contractor or his Subcontractors who is judged by the Engineer to be incompetent shall be removed from the work and replaced by a competent individual.

108.17 DEVIATION ALLOWED

Finished surfaces in all cases shall conform with lines, grades, cross sections and dimensions shown on the approved drawings or described in the Specifications. Deviations from the approved drawings and working drawings as may be required by the expedencies of construction will, in all cases, be determined by the Engineer and authorized in writing. If the Engineer deems it inexpedient to correct work injured or done in an unauthorized manner, an equitable deduction from the contract price of the work done shall be made by the Engineer subject to approval of the City Engineer.

108.18 RIGHT-OF-WAY

The City's right-of-way will in general be adequate for construction purposes. Nothing marked on the drawings shall be interpreted as giving the Contractor exclusive occupancy of the territory provided by the City. The City and its employees for any purpose, and other contractors of the City, for any purpose required by their respective contracts, may enter upon or occupy portion of the land furnished by the City. When the territory of one contract is a necessary or convenient means of access for the execution of another contract, such privileges of access or any other reasonable privilege shall be granted by the Contractor to the extent, amount, in the manner and at times necessary. No such joint occupancy or use of the territory shall be made the basis of any claim for delay or damages.

108.19 SHOP DRAWINGS AND SUBMITTALS

- A. The Contractor shall submit to the Engineer all shop drawings, submittals and schedules required for the work, including those pertaining to structural and reinforcing steel within fifteen calendar days from the date of the Notice of Award. The Contractor shall make any corrections in the drawings required by the Engineer, and resubmit the same without delay.
- B. Three final copies of all shop drawings, submittals and schedules shall be submitted to the Engineer, who after checking will retain two copies and return one copy to the Contractor. The Engineer's approval of shop drawings of equipment and material shall extend only to determining the conformity of such equipment and materials with the general features of the design drawings prepared by the Engineer. It shall be the responsibility of the Contractor to determine the correctness of all dimensions and minor details of such equipment and materials so that when incorporated in the work, correct operations will result.

108.20 RECORD DRAWINGS

The Contractor shall maintain an up-to-date set of contract documents legibly marked depicting all constructed improvements at the site or as otherwise specified and shall submit a complete set labeled "Project Record" to the Engineer upon completion of the project.

A. Drawings:

1. Depths of various elements of foundation in relation to finish floor datum.
2. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements and project survey control.
3. Location of internal utilities and appurtenances concealed in the construction, referenced to permanent surface improvements and project survey control.
4. Field changes of dimensions and detail.
5. Changes made by Field Order or by Change Order.
6. Details not on original Contract Drawings.

B. Specifications and Addenda:

1. Manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.
2. Changes made by Field Order or by Change Order.

108.21 MATERIALS

- ### **A.**
- Unless otherwise stipulated in the Specifications, all workmanship, equipment, materials, and articles incorporated in the work covered by this contract are to be new and of the best grade of their respective kinds for the purpose. The Contractor shall furnish to the Engineer for the Engineer's approval, the name of the manufacturer of machinery, mechanical and other equipment, which he contemplates installing, together with their performance capacities and other pertinent information including but not limited to instruction manuals pertaining to the use and operation of such machinery, mechanical and other equipment.

- B. When required by the Specifications, or when called for by the Engineer, the Contractor shall furnish for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection.

108.22 TESTING OF MATERIALS

- A. Tests and Inspections. The City will employ and pay for the services of an approved testing laboratory to perform specified services for the field testing of:

Soil Compaction Control
Cast-in-Place Concrete
Asphalt Concrete Pavement

The Contractor shall perform, or arrange for the performance, and pay all costs in connection therewith, all other tests and inspections required by the contract documents. The Contractor shall pay for all testing laboratory services in connection with tests verifying conformance of proposed materials and installation with project requirements including, but not limited to, mix designs, riprap, gradation tests for embedment, fill and backfill materials. The City shall pay for testing laboratory services in connection with tests on materials after incorporation into the project, unless retesting of materials is necessary because of the failure of the materials to meet the project requirements. The Contractor shall obtain the City's written acceptance of the testing laboratory before having services performed.

- B. Requirements for Independent Testing Consultants.

Comply with "Recommended Requirements for Independent Laboratory Qualifications", latest edition, published by the personnel, facilities, equipment and other qualification data, including; Report of inspection of facilities made by the American Council of Independent Laboratories, and basic requirements of ASTM E-329, "Standards of Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction", latest edition.

Submit to the City for prior approval, the name and address of the proposed testing laboratory with description of personnel, facilities, equipment and other qualification data. Certificate of calibration of applicable testing equipment made by an accredited calibrated agency within 12 months prior to submittal date.

- C. Test Reports

Testing agency shall be instructed to submit directly to the City three (3) copies of all reports of tests or inspections made, showing compliance, irregularities or deficiencies, identifying project, date of test, location in

project, applicable specification section, applicable standard(s) for compliance, observations relating to compliance, name and signature of inspector

D. Contractor Responsibilities

Furnish access to the work, materials, equipment and labor required to accommodate inspections and test when testing laboratory is retained by the City. In the event retesting of materials, or recompaction is necessary because of the failure of the materials or compaction to meet the project requirements, the cost of said retesting shall be borne by the Contractor. Cost of said retest will be deducted from the final payment amount due the Contractor, or invoiced directly to the Contractor at the City's discretion.

108.23 DIFFERING SITE CONDITIONS

- A. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Project Engineer/Manager of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.
- B. The Project Engineer/ Manager shall promptly investigate the site conditions after receiving the notice. If the Engineer/Project Manager determines that conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions encountered, an equitable adjustment shall be made under this clause and the contract modified accordingly.
- C. No request by the Contractor for an equitable adjustment to the contract shall be allowed, unless the Contractor has given the proper written notice and the Project Engineer/Manager determine the condition is in fact a Differing Site Condition; furthermore, the City of Colorado Springs shall not be liable for an equitable adjustment under this clause if the Contractor disturbed or repaired the condition without prior inspection by the Project Engineer/Manager, or if the contract is completed.

CHANGED CONDITIONS

- A. When additional information regarding foundation or other conditions becomes available as a result of the excavation work, further testing, or otherwise, it may be found desirable and the City shall have the right to change the location, alignment, dimensions, or design of the work to meet such conditions.
- B. During the progress of the work, the City may find it advisable, and it shall have the right to omit portions of the work and to increase or decrease any items as may be deemed necessary or desirable without changing the unit prices in the proposal, provided such increase or decrease does not exceed fifteen percent (15%) of the total monetary value of the original contract. If the material or labor involved in such a change is not included in the unit prices of the contract, but forms an inseparable part of the work to be done under this contract, and the delay involved in asking for the advertising for bids and the letting of a new contract therefore might result in damage, injury, or impairment of the plant, work system or other property belonging to the City, the City may, in its discretion, declare an emergency and require the Contractor to proceed with such alterations and additions. The Contractor will not, however, be required to perform such extra work and furnish such extra materials without a written Change Order from the Engineer. The parties hereto shall agree upon any sum to be paid for said work in advance of performing it. The Contractor shall make no claims for extra work unless the work was performed as authorized by a properly executed Change Order. Additional compensation or credit for work covered by a Change Order must be determined by one or a combination of the following methods:
1. Unit bid prices previously approved.
 2. An agreed lump sum.
 3. The actual cost of:
 - a. Labor (including foremen and extra supervision if required).
 - b. Materials entering permanently into the work.
 - c. Rental cost of construction plant and equipment used for the work.
 - d. Power and fuel required for the operation of power equipment used for change order work.
 - e. The Contractor shall furnish a breakdown of cost including but not limited to bills, payrolls, invoices and vouchers covering the cost of the work. To this cost there shall be added a fixed fee to be agreed upon, but not to exceed fifteen percent (15%) of the cost of work. The fee shall be compensation to cover the cost of management, insurance, benefits, bond, profit and any other general expenses.

The cost of Subcontractor's work shall be determined according to methods 2 and 3, above, to which the Contractor may add a maximum of fifteen percent (15%), which amount shall be compensation for the cost of the Contractor's management, insurance, benefits, bond, profit, and any other general expenses.

108.25 CHANGES IN THE WORK

The City may make written changes in the Plans and Specifications or scheduling of the contract within the general scope of this contract at any time by a written order. If such changes add to or deduct from the Contractor's cost of the work, the contract price shall be adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for an extension of time caused thereby shall be allowed and adjusted at the time of ordering such change or at such time as it can be ascertained.

- A. In giving instructions, the Engineer shall have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purpose of the work. No extra work or change shall be made unless in pursuance of a written order by the Engineer, and no claim for an addition to the contract sum shall be valid unless the additional work was so ordered.
- B. The Contractor shall proceed with the work as changed and the value of any such extra work or change shall be determined as provided for in the Agreement.
- C. It shall be expressly understood and agreed to by the contractor that no claim for extra work, will be recognized by the City unless same has been ordered in writing by the Engineer and unless claim for such added work has been filed by the Contractor within five (5) days after the end of the calendar month in which such alleged extra work was performed.

108.26 PROTESTS

If the Contractor considers any work demanded of him to be outside the requirements of the contract, or considers any record or ruling of the Engineer or of the inspectors to be unfair, he shall immediately upon such work being demanded or such record or ruling being made, as in writing, or written instruction or decision, whereupon he shall proceed without delay to perform the work or to conform to the record or ruling, and, within ten (10) days after date of receipt of the written instructions or decisions, he will file a written protest with the Engineer, stating clearly and in detail the basis of his objection. Except for such protests or objections as are made of record in the manner herein specified and within the limit stated, the written records, rulings, instructions, or decisions of the Engineer shall be final and conclusive. Instructions and decisions of the Engineer contained in letters transmitting drawings to the Contractor shall be considered as written instructions or decisions subject to protest or objections as herein provided. In the event of a protest, the protest shall be presented to the City Engineer, the City Engineer's decision shall be final and conclusive.

108.27 REMOVAL AND SUSPENSION FOR DEFECTIVE WORK

All work or material which has been rejected shall be remedied or removed and replaced in an acceptable manner. Additional compensation will not be allowed for such removal and replacement. Any work done beyond the lines and grades shown on the drawings, except as herein provided, will be considered as unauthorized and will not be measured or paid for. Work so done may be ordered removed at the Contractor's expense. Should the Contractor fail to comply promptly with any order of the Engineer made under the provisions of this paragraph, the Engineer shall have the authority to cause said work to be removed and to deduct the cost from any money due, or to become due, from the Contractor. At any time during the course of construction of this project if the provisions of the Plans, Specifications, or contract provisions are being violated by the Contractor or his employees, the Engineer shall have the right and authority to order all construction to cease or material to be removed, until arrangements satisfactory to the Engineer are made by the Contractor for resumption of the work in compliance with the provisions of the contract.

108.28 CLEANING UP AND FINAL INSPECTION

- A. The Contractor shall at the completion of the work, remove all rubbish from and about the work and all tools, equipment, scaffolding, and surplus materials and shall leave the work clean and ready for use. In case of dispute, the City may remove the rubbish and surplus materials and charge the cost to the Contractor.

- B. All sewers, conduits, pipes, and appurtenances and all tanks, pump wells, chambers, buildings, and other structures shall be kept clean during construction and as the work or any part thereof approaches completion, the Contractor shall systematically and thoroughly clean and make any needed repairs to them. Contractor shall furnish at Contractor's own expense, suitable tools and labor for removing all water and cleaning out all dirt, mortar, and foreign substances. Any undue leakage of water into the structures such as to make the work, in the opinion of the Engineer, fall short of first class work, shall be promptly corrected by the Contractor at Contractor's own expense.

Cleaning and repairs shall be arranged, so far as practicable, to be completed upon finishing the construction work. Notice to begin the final cleaning, and repairing, if such is needed, will be given by the Engineer, who at the same time will make his final inspection of the work. The Engineer will not approve the final estimate of any portion of the work until after the final inspection is made and the work found satisfactory.

108.29 CUTTING AND PATCHING

- A. The Contractor shall do all cutting, fitting, or patching of work that may be required to make its several parts fit together or to receive the work of other contractors shown upon, or reasonably implied by the Plans and Specifications for the completed project.
- B. Any cost caused by defective or ill timed work shall be borne by the Contractor.
- C. The Contractor shall not endanger any work by cutting, digging, or otherwise and shall not cut or alter the work of any other contractor without the consent of the Engineer.

108.30 FINAL TESTS

After completion of the work, the Contractor shall make any and all tests required by the Specifications or by Municipal, State or Federal regulations, and where so provided in said regulations shall furnish the City with certificates of inspection by the Municipal, State or Federal regulation bodies. The Contractor shall also make all tests required by the National Board of Fire Underwriters for the purpose of determining insurance rates or other protection of the City or the public.

108.31 CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the final payment nor any provision in the contract documents shall relieve the Contractor of the responsibility for negligence or faulty materials or workmanship within the extent and periods provided by law and by this contract.

108.32 GUARANTEE

- A. All work shall be constructed in compliance with standard construction codes, and all materials and workmanship must be guaranteed for a period of two years from the date of final acceptance. The Contractor guarantee period (two-year warranty period) will not begin until the contract is 100 percent complete, as determined by the Engineer. Acceptance of the 100 percent complete contract shall be requested in writing by the Contractor. Any item requiring repair and/or replacement prior to expiration of the two-year warranty period shall be guaranteed for a period of one-year after the date of said correction or repair or for the remainder of the two-year warranty period, whichever is longer.
- B. In placing orders for equipment, the Contractor shall purchase same only under a written guarantee from the respective manufacturers that the equipment supplied will function satisfactorily as an integral part of the completed project in accordance with the Plans and Specifications.

Furthermore, the Contractor shall require that the manufacturer agree in writing at the time order of equipment is placed that manufacturer will be responsible for the proper functioning of the equipment in cooperation with the Contractor, and that whenever necessary during the installation period or tuning up period following construction period, the manufacturer will supply without additional cost to the City, such superintendence and mechanical labor and any adjustments and additional parts and labor needed to make the equipment function satisfactorily, even if the same was not shown on approved shop drawings.

SECTION 109

PAYMENTS AND ACCEPTANCE OF WORK

109.01 PAYMENTS

Payments will be made as the work progresses at the end of each month or as soon thereafter as practicable in compliance with Title 24, Article 91, Section 103 and Section 110, Colorado Revised Statutes, on statements made and approved by the Engineer. In preparing statements, only completed work will be taken into consideration. No payment will be made for materials in storage and/or delivered to the site, unless otherwise approved by the City.

Payment for work performed by the contractor under these contract documents will be made at the approved unit price or lump sum price for each of the several items as listed in the bid and measured as hereinafter specified. Such payment shall compensate the Contractor for all costs in connection with furnishing all labor, equipment and material required and performing the operations necessary to complete the item in accordance with the contract documents. All incidental work essential to the completion of the project in a workmanlike manner, and including cleanup and disposal of waste or surplus material, shall be accomplished by the contractor without additional cost to the City. The cleanup and disposal of waste or surplus material shall be performed during construction or as soon after as is reasonably possible in order to better maintain the aesthetics and safety of the construction area. The quantities listed in the bid are estimated quantities, and are listed only for convenience in comparing bids. Payment will be made for the actual quantities constructed or installed, unless otherwise noted in these contract documents. However, any changes to plan quantity must be approved through proper change order procedures, said quantities being measured as specified in the contract documents.

If the contract exceeds EIGHTY THOUSAND DOLLARS (\$80,000.00), no monthly payment shall exceed NINETY PERCENT (90%) of the calculated value of any work completed until FIFTY PERCENT (50%) of the work required by the contract has been performed. Thereafter, the City shall pay any of the remaining installments without retaining additional funds, if in the opinion of the City, satisfactory progress is being made under the contract. All other provisions set forth above shall be complied with.

Should the City determine at any point in the project after fifty percent (50%) of the work required has been performed that satisfactory progress is not being made under the contract, the City may retain up to ten percent (10%) of any partial payment requests submitted thereafter, if it is the City's opinion that additional retaining of funds may be necessary to assure proper completion of the project.

109.02 CORRECTION OF WORK BEFORE FINAL PAYMENT

- A. The Contractor shall promptly remove from the premises all materials and work condemned by the Engineer as failing to meet contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute Contractor's own work in accordance with the contract and without expense to the City and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- B. All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such condemned work and materials within ten (10) days time thereafter, the City may, upon ten (10) days written notice, sell such materials at auction or at private sale and retain the proceeds without compensation to the Contractor.

109.03 PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK

The City may withhold or nullify the whole or part of any certificate of payment to such extent as may be necessary to protect it from loss caused by:

- A. Defective work not remedied.
- B. Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor.
- C. Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- D. Damage to another contractor.
When the above grounds are removed, payment shall be made for amounts withheld because of them.

109.04 ACCEPTANCE OF FINAL PAYMENT

- A. Upon notice that the work is fully completed, the Engineer will make a final inspection. If the Engineer finds the work acceptable under the contract and the contract is fully performed, the work may be finally accepted by the Engineer under the terms and conditions of the contract. The entire balance found by the Engineer to be due the Contractor, including the retained percentage, less any retention based on; (1) the Engineer's estimate of the fair value of the claims against the Contractor; and (2) the cost of completing the incomplete or unsatisfactory items of work with specified amounts for each incomplete or defective item of work; and (3) retentions required by law, shall be due and payable to the Contractor. The date of completion is the date as specified in the Certificate of Completion issued by the Engineer.

- B. Upon completion of the work under the contract and before the Contractor shall receive or be paid for the Engineer's final statement, the City Purchasing and Contracts Office shall publish in a newspaper published in the City of Colorado Springs, a notice that the City has accepted such work as completed according to the Plans and Specifications and rules set forth in the contract; that the Contractor is entitled to final settlement; that after the final publication, the City will pay the full balance due under the contract; and that persons having claims for labor or material furnished the Contractor must present their claim to the City Purchasing and Contracts Office prior to the date specified for such payment. Nothing herein shall be construed as relieving the Contractor and the sureties on the Contractor's bonds from any claim or claims for work or labor done or materials or supplies furnished in the execution of the contract.
- C. The making and acceptance of the final payment shall constitute a waiver of all claims by the Contractor against the City.
- D. If, after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Engineer so certifies, the City may, upon Certificate of Completion by the Engineer, and without terminating the contract, make payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment and acceptance of the project shall constitute a waiver of all claims by the Contractor but acceptance shall not constitute a waiver of City claims against the Contractor.
- E. Advertising for Final Payment and processing of the Final Pay Request shall not take place until after the Contractor has submitted Sales and Use Tax Forms to the City of Colorado Springs and said forms have been reviewed and approved by the City Sales Tax Office.

SECTION 110

TERMINATION OF CONTRACT

110.01 THE CITY'S RIGHT TO TERMINATE CONTRACT

- A. In accordance with the City Charter, performance of the City's obligations under this contract are expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this contract, or appropriated funds may not be expended due to City Charter spending limitations, then the City may terminate this contract without compensation to the Contractor.
- B. If the termination is for failure of the contractor to fulfill the contract obligations, the City may terminate the subject contract for Default, and complete the work by contract or otherwise, and the contractor shall be liable for any additional cost incurred by the City. Prior to issuing a Termination for Default, the City will issue a Notice to Cure allowing the contractor a minimum of ten (10) calendar days to prepare a plan to correct whatever failures are causing the contract obligation failure (s). The City will have the right to accept the plan of correction or to continue with the Termination for Default.
- C. Where the contract has been terminated for Default by the City, said termination shall not affect or terminate any of the rights of the City as against the Contractor or his surety then existing or which may thereafter accrue because of such default. Any retention or payment of moneys by the City due the Contractor under the terms of the contract, shall not release the Contractor or the Contractor's surety from liability for the Contractor's default.
- D. If the Contractor should become bankrupt and a relief from stay is granted to the City, or if the Contractor should make a general assignment for the benefit of Contractor's creditors, or if a receiver should be appointed on account of Contractor insolvency, or if Contractor should persistently or repeatedly refuse or should fail, except in cases for which extensions of time are provided, to supply enough properly skilled workmen or materials, or if Contractor should fail to make payments to subcontractors or for material or labor so as to affect the progress of the work, or breach, or substantially violate any provision of the contract, then the City, upon the written notice of the Engineer may, without prejudice to any other right or remedy, terminate the contract for default and take possession of the premises and of all materials, tools, equipment, and other facilities installed on the work and paid for by the City, and finish the work by whatever method the City may deem expedient. In such cases, the Contractor shall not be entitled to receive any further payment under the contract.

- E. The City may also terminate this contract for convenience of the City, upon written notice to the Contractor, without additional compensation to the Contractor, unless the Contractor has started or performed portions of the contract prior to receiving such notice. If performance of the contract is underway, the City will be liable only for the portions of work actually satisfactorily completed up to the point of the issuance of the Notice of Termination for Convenience. In no event shall the City be liable for unperformed work or anticipated profits or overhead. Upon receipt of this notice the Contractor shall immediately: discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

110.02 COMPLETION OF CONTRACTS IN DEFAULT

- A. If for any reason a contract is declared in default, the City shall have the right without process or action at law to take over all or any portion of the work and complete it in any manner the City deems most appropriate. Written notice shall be given the Contractor by the City that the contract has been declared in default, and upon receiving such notice, the Contractor shall peaceably relinquish possession of the said work or the parts thereof specified in the notice.
- B. The City may, at its option and at a rental which it considers reasonable, retain all material, equipment, and tools on the work until the work has been completed.
- C. Neither the City nor any officer, agent or employee of the City shall be in any way liable or accountable to the Contractor or the Contractor's surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid. Should the cost of completing the work be in excess of the original contract price, the Contractor and Contractor's surety shall be responsible for such excess cost. Should the cost of such completion, including all proper charges, be less than the original contract price, the amount so saved shall accrue to the City. Neither by taking over the work nor by declaring the contract in default shall the City forfeit the right to recover damages from the Contractor or Contractor's surety for failure to complete the entire contract.

110.03 REMOVAL OF EQUIPMENT

Except as provided in Section 110.01 above, in the case of termination of this contract before completion from any cause whatever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of Contractor's equipment and supplies from the property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

